1922

C.F. 66 (a)—14,824—17-12-21.

Department of Revenue

OFFICE Board of Rev & Sett

STATION Madras

Mis No. 2168

Dated 8-11-22

#4406

To whom sent		Date	Initial.
	Given for copying		
	Copied	1-30	
	Examined	8/11	
	Signed		
	Given for despatch		
	Despatched	8/11/22	
	Indexed		
Pages in the file	To be destroyed on		

(SUBJECT.)

Revenue Recovery - (South Kanara)

Income tax arrears - Land - Sale - Cancellation - Negatived

* Not to be filled in the case of permanent records.

C.F. 22 1-20.

No. E-2- 3257-22.

OFFICE OF THE Collector of South Kanara,
STATION a n g a l o r e,
Date 14th October 1922.

A 4406

From

.R.Ry. A. Ramacha Nedungadi, Avl., B.A.,B.L.,
Collector of South Kanara.

To

The Secretary to the Board,
Land Revenue and Settlement,
M a d r a s.

SIR,

Suit Notice - Income-tax - defaulter - Pinto A.L. --- Sale of land.

A sum of Rs. 29-1-0 was due from one A. I. Pinto as -- income-tax on adjustment for 1919-20 and a further sum of --- Rs. 3-2-2 as penalty. As he did not pay these amounts, his right, title and interest in the garden S.No. 62 of Attavar -- measuring 1 acre and 1742 square feet and assessed at Rs.6-4-0 which was owned jointly by himself and six others and which -- stood in his patta was sold by the Revenue Inspector of Mangalore on 6th March 1922, subject to all encumbrances, and it -- was purchased by the defaulter's nephew, Vincent Pinto for -- Rs. 600/-. The hole property had been mortgaged with ------ possession by all the joint owners together to one Mathias for Rs. 8,000/-.

2. Within 30 days of the sale, three persons offered to -- the Divisional Officer, Mangalore to pay the amount due to --- Government and requested that the sale might be set aside. -- These were (1) the defaulter himself, (2) Joseph Pinto, a ---- brother of the defaulter (he applied on behalf of the ------ defaulter), and (3) the mortgagee, Mathias. The first did not press his petition. The second was given an endorsement that his petition would be considered, if he deposited in the Taluk Office within 30 days of the sale, the arrears due to -- Government together with 5% of the purchase money, etc. But he did not deposit any money at All. As regards the third --

no action was taken. The sale was finally confirmed by the --- Divisional Officer on 8th May 1922.

3. Four persons have now come up before me objecting to the - confirmation of the sale on the ground of several irregularities in the proclamation and conduct of the sale. These are (1) --- Subbaya Gowda, a creditor of the defaulter, (2) P. L. ~~Pinto~~ Brito, another creditor, (3) Joseph Pinto, defaulter's brother already ---- referred to, and (4) the mortgagee, Mathias mentioned above. I have given a hearing to all these. No. 3 does not deserve any - consideration, as he failed to deposit the amount, though he was - given time by the Divisional Officer and No. 4, the mortgagee also can have no real grievance as the sale was subject to all prior - encumbrances. No 1 had attached the property through the District Munsiff's Court, Mangalore prior to the revenue attachment and --- No. 2 had attached it through the same Court after the revenue --- attachment. They contend that the sale was invalid for the ---- following reasons:-

(1) The notice was not published in the village one month before the sale as required by Section 36 of Madras Act II of 1864.

(2) No notice was at all affixed to the land sold.

(3) The buildings on the land had not been mentioned in the notice

(4) The right and interest owned by the defaulter had not been --- specified.

(5) No notice had been given to the Civil Court as required by -- B.S.O.No. 47(2).

(6) The sale was fraudulently brought about to ~~defraud~~ defeat the creditors as will be evidenced by the fact that the defaulter's moveables were not proceeded against and that the property was purchased by the ---- defaulter's nephew for a low sum.

(7) The sale after attachment by the Civil Court was illegal.

(8) The sale having been held subject to encumbrances, it is null and void under the decisions of the Madras High Court reported in -- 20 Madras Law Journal, 794, 1910 Madras Weekly Notes, 722 and 8 ---- Indian Cases, 414.

4. I shall now deal with these objections seriatim.

Objection 1:- This objection is based on the shanbhogue's -

endorsement on the duplicate copy of the notice that he published - it in the village on 26th February 1922, i.e. only 8 days before - the sale. But the notice was also published on 31-1-1922, in --- the Taluk Office which is in the same village as the land sold. -- Section 36 of the Madras Act II of 1864 does not require the ----- publication of the notice in the village.

(1) Probability is that it was fixed up on 26.2.22 - as above -

Objection 2:- The shanbhogue in his endorsement dated 26th February 1922 has stated that he affixed a notice to the land, but he has not stated therein when he did it, ~~but there is no satis-factory evidence on the point~~. In his statement dated 17.4.2 he says that he affixed the notice to the land on 5.2.22, but there is no satisfactory evidence on the point.

Objection 3:- It is true that buildings had not been shown in the notice, but the sale having been held on the land itself, -- any intending bidder could have ascertained what all were being -- sold. ~~This also had not been done~~.

x Post Sec 36, second clause requires that 2) the buildings should be specified

This also had not been done.

Objection 4:- Section 36 of the Madras Act II of 1864 ---- which prescribes procedure relating to the proclamation of the --- sale does not require this to be done. It was also not possible - for the Tahsildar to do this, as he could not be expected to hold a judicial enquiry.

Objection 5:- B.S.O. 47, para 2 requires that the notice - of the intention of the Revenue Authorities to bring the land to sale should be given to the Civil Court, if it be found in the -- course of distraining land for arrears of Revenue that the right, title and interest of the defaulter have been previously attached by the Civil Court. In this case, the Civil Court attachment was not brought to the notice of the Tahsildar until the sale was held, ~~though~~ but notice of attachment by the Civil Court had been served --- upon the Collector and that means with this Dist Rev administrator; I think that this omission is a material --- irregularity which prejudiced No. 1. .

Objection 6:- There were no moveables which could be ----- proved as belonging to the defaulter available for attachment and so the land was proceeded against. The Tahsildar reports that - the price fetched is very fair, ~~cause being~~ considering that the property had been heavily encumbered. There is therefore no ground to suspect fraud except on the ground that the purchaser is the defaulter's nephew.

Objection 7:- The case reported in I.L.R. XLIII All. 612 shows that there ~~was~~ is nothing illegal in the sale of land attached by the Civil Court, by the Revenue Authorities.

Objection 8:- The rulings quoted by the objectors are -- not applicable to the present case. Sales under Act II of 1864 subject to all previous encumbrances are permissible for the ---- realisation of arrears of income-tax.

5. The omissions pointed out in objections Nos. 2 and 5 ---- appear to me very serious irregularities which vitiated the sale and prejudiced the attaching creditors (Nos. 1 and 2). If the Board agrees with me, I request that the Board may be pleased to allow me to cancel the sale, ~~as I have no power~~ as under B.S.O. 41(12), more than three months ~~have~~ having elapsed since the sale. — p 143, Vol I B S O

6. In this connection I have also to inform the Board that the purchaser threatens to sue the Government if the sale is cancelled. He says that according to 41 Madras 955, I have no jurisdiction to cancel the sale and that the objections of the objectors are time-barred, they not having come forward with their objections within 30 days of the sale. I think both the objections are untenable, the first because in the present case I have not ratified the Divisional Officer's order -- confirming the sale as in the case reported in 41 Madras and the latter because my interference now will be under Regulation VII of 1828 and not under Section 37(1) of Madras Act II of 1864.

7. The connected records are submitted as per list.

A. Macnamara

Collector.

16.10.

B 4023 — A-A 4489 5

Before the Board of Revenue,

Mis. Petition No.

Vincent E. Pinto, son of Steven Pinto, Biscuit Manufacturer, Balmatta Raod, Mangalore. . . . . Petitioner.

The Petitioner above-named begs to state as follows:-

1. The Petitioner is the Auction Purchaser of a share of S. No. 62 of Attavar Village, -- Mangalore Town, in a Revenue sale subject to encumbrances, held by the Tahsildar on 6-3-1922 for default of income tax of one A. L. Pinto, the owner thereof.

2. Objections were raised by the defaulter's one Joseph Pinto an unsuccessful bidder at the -- auction , within a month of the date of the sale; but as they did not make the necessary deposits, even though informed by the Deputy Collector, the objection petitions were dismissed, and the Petitioner having paid the full amount the sale was confirmed by the Deputy Collector on 8-5-1922.

3. Long after the date of the sale one Subbaya Gowda on16-6-1922, one P. L. Brito on 5-7-1922, and the very same twice unsuccessful Joseph Pinto in September last filed petitions before the District Collector, praying the aforesaid sale be set aside, alleging inter alia that no notice of the sale was fixed on the property a month before the date of the sale as required by law, that they had attached the property in - execution of a Civil decree, that no notice of the

intended sale was given to the attaching Court viz. the District Munsiff's Court of Mangalore, and that they had sustained substantial injury by reason of the sale.

4. The Petitioner filed his statement and the aforesaid petitions were heard by the District Collector on 25-9-1922. The Petitioner now learns that the District Collector has referred the matter to the Board, urging that the sale may be set aside, as the interests of the creditors have been substantially injured by reason of no notice --- having been sent to the attaching Court, and only an eight days notice being fixed on the aforesaid properties.

5. The Petitioner now begs to submit that as a matter of fact notices were affixed a month before the sale, to the Taluk Cutcherry situated in the same village, to the Town Police Station, and the Taluk Police Station as also to the Honnur Building; that even to the aforesaid property, notice was really affixed a month before the date of the sale; but unfortunately as the Shanbhogue did not take down the signatures of the Moktessors on the day of affixing the notice to the said property, but some time after, the Collector now erroneously concludes that the notice was affixed only on the day the Shanbhogue obtained the Moktessors' signature .

6. Even considering that the notice was affixed to the sale property only eight days --- prior to the sale, it is urged, that in the face of other notices fixed up in time, this solitary exception is not a serious irregularity

that might vitiate the whole sale;.

7. The learned District Collector has again erred in thinking that substantial injury has resulted as a consequence of the sale. Both the creditors, P. L. Brito and Subbaya Gowda have long ago attached the surplus proceeds of the sale amounting to about Rs. 570/-; futher A. L. Pinto the defaulter has other property in the same village viz. S. No. 78 worth Rs. 6000/-; the claims of the two creditors do not amount to more than Rs. 1000/- so that clearly there is absolutely no injury consequential to the aforesaid sale.

8. The learned District Collector has not considered at all whether the applicants before him had any right or interest in the aforesaid -- property to entitle them to bring such petitions to set aside the sale. Under sections 35 and 37 of Madras Act II of 1864, only persons interested in the land have the option of releasing it by payment of the arrears; and it is settled law that no -- creditor by attaching a judgement debtor's property acquires any interest therein. If that be so the applicants before the Collector are clearly out of court; and whatever their rights be, it is submitted that they have no locus standi to bring any petition to have the Revenue sale set aside.

9. It is true that owing to oversight of the Revenue Subordinates, no notice was given to the Civil Court that had attached the property as required by S. O. 47, II. But that is hardly any reason why the wrongs of the Government ser-

vants should be visited on the head of a bonafide purchaser for value. Nor is that a crime which vitiates the sale itself: firstly no provision of the Revenue Recovery Act commands that such a notice should be given, much less does it lay down that in the absence of such notice the sale itself is void. Secondly, there are clear, unambiguous decisions of the High Court to show that a Revenue sale is not affected at all by any prior attachment of a Civil Court; I. L. R. 43 Allahabad ~~attached~~ 612. I. L. R. 40 Cal. 89, is a Privy Council decision which goes far beyond, and is an authority for the proposition that in a competition between a purchaser in execution of a decree of a Civil Court and a purchaser in a subsequent Revenue sale, the purchase by the latter ~~was held to be~~ in valid. Thirdly, a Revenue purchaser is not affected by any incumbrances or alienations by the defaulter,— and analogically also by attachments by the defaulter's creditors — between the date of default and the date of the Revenue sale: I. L. R. 17 Cal. 148. In the present case the attachment by the Civil Court was long after the date of the default. If that be so, it is prayed that there is absolutely no cause for setting aside the aforesaid revenue sale, on the ground that no notice was given to the attaching Civil Court.

10. The Petitioner humbly submits two other points of law, for the kind consideration of the Board:-

I. The applications before the Collector are barred, by the clear provisions of Sec. 38, clause 1 of the Revenue Recovery Act. That --

section requires that persons who suffer substantial injury by reason of the sale must apply for cancellation within a month of the date of the sale.- The applications before the Collector are dated 1-6-1922 and 23-6-1922; the date of the sale is 6-3-1922; clearly then the applications are barred by limitation according to Act II of 1864. No doubt S. O. 41, para 12 lays down that where the sale is confirmed by the Divisional Officer, it is open to revision by the Collector suo motu or on appeal from one or other of the parties concerned, at any time. But this is open to two of the objections:-

i. The applications before the Collector are original petitions and not appeals, as the abovenamed Creditors brought no petition to the Divisional Officer before the date of confirmation.

ii. It is respectfully submitted that a standing order of the Board of Revenue cannot over-ride the provisions of an Act of legislature, nor can it extend the period of limitation for applications to set aside the sale before the confirmation by the Collector, when the law prescribes only a month from the date of the sale for such applications. When once a month has passed from the date of the sale, the remedy of an aggrieved person is to seek the Civil Court as per sec. 59 of the Revenue Recovery Act.

II. When once a valid order of confirmation of the sale is passed under sec. 38, the sale

sale can be set aside only by a Civil Court under section 59, and by no other authority. S.O. 41, para 12 no doubt lays down that when a Divisional Officer has confirmed the sale, the Collector has authority to set it aside with the sanction of the Board of Revenue. This is -- hardly warranted by law. It is true that Regulation VII of 1828 gives the Collector general powers of revision and control over his subordinates just as the Board of Revenue is given statutory control exercisable over the District Collectors. But if ~~any~~ an order of confirmation of a sale by a Collector is not open to revision by the Board of Revenue as ruled by the Madras High Court in I. L. R. 41 Mad. 955, then it is submitted that an order of confirmation by the Divisional Officer, duly empowered by law --- (Regulation VII of 1828) to act on behalf of the Collector is not open to revision by the latter. The reason is obvious. When a person duly empowered to act on behalf of another does a certain act which creates a liability, it is not open to the latter to repudiate that liability on the ground that he has got powers of revision over the former. The Government are as much liable for its contracts as a private person, and a revenue sale has all the incidents of an ordinary contract of sale, subject to this modification, that the contract is concluded only when the order of confirmation is made. So that the moment the confirmation is made by the Collector, or by a duly authorised person on his behalf, "the sale is complete not only for the

purposes of section 59 of the Revenue Recovery Act" as stated in the concluding sentence of para 12, S.O. 41, but for every other purpose, and definite rights to the property sold are vested in the purchaser, which cannot afterwards be defeated by a cancellation of the sale. The Government are vicariously liable on such a contract concluded by its duly authorised servant;' and no master can legally repudiate his contracts on the ground that he has exercised his general powers of revision in a particular case. What is humbly submitted therefore is that an order of the Collector now setting aside the sale -- would be illegal, and thatif such an order is passed, the Government would still be liable to be sued for the specific performance of a contract concluded by its Agent on its behalf.

11. Further if long after the statutory period the Government are entitled to set aside a sale held by its Officers on the alleged irregularities of its subordinates, no purchaser who has had the misfortune of his sale being confirmed by a Divisional Officer would ever feel safe. Any one on the strength of S.O. 41, para 12 may apply to the Collector at any time to have the sale set aside; he has to allege only some silly irregularities. Surely, no proper construction of the Revenue Recovery Act, nor any regard to public interests can warrant the proposition that a sale validly confirmed by a Deputy Collector may be set aside by a Collector on any application even a hundred years after the date of such sale.

It is therefore prayed that the Board

12

of Revenue will not order the aforesaid sale, to be set aside, and thereby drive the ~~the~~ Petitioner to seek his remedy in a Civil Court.

Mangalore,
21st Oct. 1922.

K. V. Venkata,

R. F. XXII-A-19—21,580—12-16.

Subject.—

FOR MEMBER

Revenue Recovery (South Kan
Income tax areas - Land
- Sale - Cancellation -
negatived.

READ AGAIN B.P., No. _____ dated _____ 191 .

" " " _____ " _____ 191 .

READ ALSO :— A 24606/22

Register No. _____, From the _____, No. _____, dated _____ 191

" " _____ " " _____ " _____ 191 .

" " _____ " " _____ " _____ 191 .

RESOLUTION. (Mis) No. 2168, dated 8th 11. 1922

Mrd 7.XI.22.

The Board considers that it is undesirable to cancel the sale. ~~The objectors should be left to take the action they may choose to take.~~

for Secy
8/11/22

To The Collr of S Kanara
with file returned

M-1

S.

To A.S

pp 1 to 4 below

pp 5 to 12 below.

Please see the Collector's letter and the suit notice placed below.

2. It relates to the question of cancellation of a sale of land for the recovery of arrears of income tax. The Collr wants to cancel the sale under the general powers of revision vested in him by Regulation VII of 1828 and applies for the Board's orders under B.S.O 41, paragraph 12. It is a matter for consideration whether the rule in B.S.O 41, paragraph 12, (issued by the Board L.R) is intended to cover Sales for recovery of arrears of income tax.

3. M-1 has already ordered that L.R cannot assume any responsibility in connection with suits &c. recovery of arrears of income tax. ~~and that~~ te. - Please see p. 2 n.f. of (N).

S. for orders

~~For orders~~ If the papers can be transferred to I.T. Comm. the draft below may be signed for issue

No 1

This is primarily a question of the procedure of co-ordinate of the Bd of Rev. in effecting a sale under the Rev. Recovery Act. The procedure & the behaviour of the distraining officer must be under the control of the Bd. L.R. H. deems the immaterial what the nature of the money upon which is being received. E.g. A similar argument would transfer revenue recovery cases relating to Dr Bd. cases to the local Self Govt. Dept.

The proper course is, I think to examine the case as a question of rev. recovery procedure in the Bd's office & let the I.T. Comm. see the file v.o. — after the issue of orders if the matter is urgent.

Even if a suit were filed, I think L.R. would have to defend it — since it is not primarily an income tax matter but a collection matter & L.R. controls the process of collection

yrs. of course. MM. 24 X. 22

[E.g. his agents initiating a sale & I with knowledge of the Collr's action prospectively enjoined]

yrs

The B.O. of 14. XII. 22 does not correctly embody my note on p. 2 n.f. What I should object to would be a suing any suit, the prosecution of which requires knowledge of I.T.

This case does not.

Examine this case quickly

MM. 24 X. 22.

To A8

A note is submitted

C.F. 16—17-2-14.

OFFICE NOTE.

SUBJECT. Revenue Recovery Act (South Kanara) - Mangalore Tk — From Attavar village - Income tax - Arrears - Sale - Cancellation.

Register No. A 4406/22

To A.S.

The Collr's letter gives a full statement of facts and the position has also been fully discussed by him.

The irregularities in the conduct of the sale are ~~three~~:-

(i) ~~No~~ A notice was ~~of~~ not affixed to the land, one month before the date of sale -

See 36, clause second - p. 352, Vol I, Madras code.

(ii) Buildings were not specified in the sale notice

(iii) Notice was not given to the Civil court which had attached the property.

B.S.O 47 (ii) - p 149, Vol I.

Nos. (i) & (ii) are not material irregularities and no person can be said to have sustained substantial injury by reason of the omissions (i) & (ii).

The question is whether no (iii) is a material irregularity. In the matter of sales for revenue arrears, B.S.O 47 (ii) prescribes that notice of intention to sell should be given to the civil court; but the present sale is not one for arrears of ~~rent~~ revenue; It is one for arrears of income tax where the property is sold subject to encumbrances; whereas ~~in~~ sales for ~~revenue~~ arrears of revenue are free ~~from of~~ encumbrances. Therefore in the sale in question not only the ~~case~~ civil court attachment but also all prior encumbrances would seem to be binding. If this position is correct, no party can be said to have sustained any injury by reason of the sale and so there is no case for cancellation. In favour of the Colr. & the B.S. re: cancellation see B.S.O 46, paras 12. for orders

para 1 of Colr.'s —

p 143

The auction purchaser threatens to sue ~~if~~ Govt if the sale is set aside. His petition to the Board

is at pp 5 to 12 e.f.

Before final orders are passed the file may be forwarded u.o. to the Comm^r of Income-tax for remarks

for DR
31 10/22 LX1.22

I.L.R. 41 Mad. 955, quoted by the Assessee purchaser does not apply p. 10, e.f. The Distt. Collr. has not exercised his powers under reg^n. VII of 1828. It is therefore open to the Board to advise him to act as he recommends.

But this does not appear to be a case for cancellation.

Irregularity no 1 in the office note above.

This is notice under Sec. 36 of Act 4 of 1864. It was published in the terms in the Distt. Collr's office and in the Taluk office on 3.2.22. and 31-1-22. - the sale was on 6.3.22.). If the copy was not affixed to the land in time, it cannot be material irregularity.

(If leave always maintained in similar cases that where there is more than one publication date, it must obviously be the first date which counts. I do not know of any ruling to the contrary.
L.)

Irregularity no 2.

The Section requires that buildings should be specified - but the Sale was held on the land - If on this account there is a defect in title -

It is

the concern of the auction purchaser.

Irregularity no 3. The attachment was by a Creditor who had no mortgage on the land. The attachment is only one of the 2 cases, was prior to the attachment by Rev. Court

The Act does not say that notice of the revenue attachment should be given to the Civil Court. This need not be considered material irregularity. The mortgagee who is also one of the persons now objecting to the sale, was aware of the sale. for he had put in a petition. & he took no steps to release the property by paying the arrears. This shuts him out. Ex.

After all the objectors have to prove, not where there are material irregularities, that they have sustained substantial injuries Sec. 38(1)

The sale was being one for arrears of encumbrance was rightly made to be subject to encumbrances. The sale reported at p. 83 (A) shows that the land was heavily encumbered - Under the conditions the price fetched was fair.

Neither the Court nor the objectors say anything about the notice to be published in the Govt Gazette under Sec. 27 of the Act. But draft was appears however that the notice was published. p. 39 (A). says that the notice was sent to press on. 7-11-21.

On the whole, it seems undesirable to cancel the sale. The objectors may be left to take what-acte they may choose to

Agn
1-11-22

I think so. This may go
V.O. & I.T.
Lo
3 Nov

Objection no. 2 - notice on the land one month before the sale.
This is covered by the provision sec. 38. (1) that - substantial injury must be proved. This has not been proved, in objection no. 1. had no interest (mortgage) on the land.
no. 3. omission of buildings. This only affects the auction purchaser, this vested offer has little to the land, he is satisfied, & will not threaten suit if the sale is cancelled.
no. 4. is not a statutory obligation.
no. 5 do. do. (not in the Act.)
no. 6. Fraud! As the price, including the mortgage, was on market the land was worth, there, fraud can be presumed.
no. 7. nothing in this
no. 8. Does not apply, as this is a sale for I. T. & mortgagee
P. Tes

the mortgagee knew of
the impending sale & did not
dispose the arrears
U.O. to Commr of
Mtl
3.XI

Jamesabaver
3 XI

U.O No A 4406 of 22.
3-11-22

c-f 12 papers
n + 6 papers
~~A~~ file 2 150 papers

To Commr of Income-Tax

There does not appear to be any question raised about the validity of the demand for Income Tax. Under sec 36 of the Income Tax Act of 1918, which was in force when the attachment & sale were made, an arrear of Income Tax may be recovered as if it were an arrear of Land Revenu and all the procedure is as for arrears of L.R. The land cannot be sold free of encumbrances, but as the Collector points out, this has not been done. I have no remarks to make, and am not in a position to advise upon the procedure in the sale.

H.S. Shields
4.11.22

U.O. to the Secy. Board of Revenue.

Draft
M-1
S

Addl.
To Secy
Draft submitted
Mtl 7.XI

6-11-22